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Changes in Oklahoma Campaign Finance: The Rise in Corporate Influence and the Need for Disclosure

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**CHANGES IN OKLAHOMA CAMPAIGN FINANCE:
THE RISE IN CORPORATE INFLUENCE AND THE
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INTRODUCTION

Oklahoma's political history is no stranger to a basic distrust of corporations.¹ Upon statehood in 1907, the same year Congress passed the Tillman Act prohibiting corporations and national banks from contributing to federal campaigns, Oklahoma's Constitution prohibited corporations from influencing state elections.² Although there are several instances of politicians engaging in relationships with corporate officials that qualify as criminal conduct, such relationships do not always involve outright forms of corruption.³

Consider, for instance, the 2011 City Council elections in Oklahoma City.⁴ The race for ward two was between Ed Shadid and Charlie Swinton, and the outcome was a true under-dog story.⁵ Shadid led a modest, self-financed campaign, which is likely what most assume to be typical in city council elections.⁶ On the other hand, Swinton received strong financial support from the Committee for Oklahoma City Momentum ("COCM"), which spent over \$400,000 in campaign expenditures for Swinton and three other city council candidates.⁷

Because COCM supported Swinton's campaign and the other candidates through campaign expenditures — as opposed to making direct campaign contributions — the amount COCM spent was not subject to the \$5,000 limit placed on campaign contributions.⁸ Additionally, COCM did not exist until shortly before the election, which lent further proof of the group's primary purpose of financially influencing Swinton's campaign.⁹

COCM received its funds from "A Better Oklahoma City, Inc.," a 501(c) non-profit group that is not required to list its individual donors.¹⁰ However, reports that surfaced after the election indicated that a group named "Forward OKC IV" contributed to

1. See OK. CONST. art. IX, § 40.

2. *Id.*; Tillman Act of 1907, Pub. L. No. 59-36, 34 Stat. 864, 865 (codified as amended at 2 U.S.C. § 441(b) (2006)), *invalidated by* Citizens United v. FEC, 558 U.S. 310 (2010); see Andrew T. Newcomer, Comment, *The "Crabbed View of Corruption": How the U.S. Supreme Court Has Given Corporations the Green Light to Gain Influence Over Politicians by Spending on Their Behalf* [Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010)], 50 WASHBURN L.J. 235, 247 (2010) (discussing a brief history of the Tillman Act).

3. See Michael Baker, *Oklahoma Elections: Ed Shadid Wins Oklahoma City Council Ward 2 Seat*, NEWSOK (Apr. 5, 2011), <http://newsok.com/oklahoma-elections-ed-shadid-wins-oklahoma-city-council-ward-2-seat/article/3555775>. Although this article discusses the corporate influence in a municipal election, which is not governed by the same laws as state elections, the corporation's role in this election is relevant for purposes of this article. See also Tony Thorton, *Steve Phipps Accuses Others*, NEWSOK (Oct. 26, 2008), <http://newsok.com/steve-hipps-accuses-others/article/3315606> (discussing a criminal scheme in which former businessman Steve Phipps made illegal campaign contributions to several Oklahoma politicians, including former Representatives Mike Mass and Randall Erwin, in exchange for the funneling of Oklahoma taxpayer money to Phipps' business).

4. Baker, *supra* note 3.

5. *Id.*

6. See *id.*

7. *Id.*

8. See *id.*

9. *Id.* The proof of COCM's purpose was evident in the fact that the public had no way of knowing the COCM's actual donors, which Shadid claimed was beneficial to his campaign because the constituents did not appreciate the idea of "anonymous money." *Id.*

10. Dana Hertneky, *Group Spends Nearly Half Million Dollars on City Council Election*, KOTV NEWSON6.COM (Mar. 31, 2011, 10:16 PM), <http://www.newson6.com/story/14362725/group-spends-nearly-half-million-dollars-on-city-council-election>.

the group.¹¹ Forward OKC IV's members include two of Oklahoma's largest corporations, Devon Energy and Chesapeake.¹²

Swinton's significant financial support from COCM led to Shadid's public criticism of Swinton for his obligations to special interest groups.¹³ Shadid concluded that his victory over Swinton and COCM's large expenditures through undisclosed individual donors indicated that Oklahomans "want anonymous money out of their elections."¹⁴ Although the public's knowledge of the large expenditures supporting Swinton — compared to Shadid's modest, self-financed campaign — arguably helped Shadid win the race, the opponents of the other three COCM-backed candidates were not as fortunate.¹⁵

The existence of this type of corporate influence through campaign expenditures makes the proposed amendments to Oklahoma's campaign finance laws a serious threat to the interests of state constituents.¹⁶ These proposed amendments surfaced after the U.S. Supreme Court decision in *Citizens United*,¹⁷ which lifted the long-time regulations on expenditures by corporations and labor unions in federal elections.¹⁸ The repeal of similar regulations in Oklahoma through the adoption of these amendments will make political races like that between Shadid and Swinton a more frequent occurrence and decrease the likelihood of success for self-financed candidates such as Shadid.¹⁹ However, if the amendments are enacted in conjunction with amendments to the state's disclosure requirements, then the voting population would know which candidates corporations supported and give candidates like Shadid a fighting chance.²⁰ If enacted without amended disclosure requirements, the proposed amendments concerning corporate expenditures could result in the replacement of constituent interests with the special interests of wealthy contributors by allowing corporations to make unlimited expenditures from their general treasury funds without disclosure of the corporations' role.²¹

11. *Id.*

12. *See id.*

13. Baker, *supra* note 3.

14. *Id.*

15. *Id.*

16. *See* Marie Price, *State Must Change Campaign-Spending to Comply with Citizens United Decision, Panel Told*, THE JOURNAL REC. LEGIS. REP. (Sept. 20, 2011), <http://journalrecord.com/23rd-and-Lincoln/2011/09/20/state-must-change-campaign-spending-statutes-to-comply-with-citizens-united-decision-panel-told/>.

17. *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010).

18. *Id.* at 917. While the decision allows independent expenditures by other groups such as labor unions, this article focuses on the influence of corporations.

19. Baker, *supra* note 3; Price, *supra* note 16.

20. Strengthened disclosure requirements drafted by the Oklahoma Ethics Commission in December 2011 that would account for sources and amounts of corporate independent expenditures under the new law can be found at OKLA. ETHICS COMM'N, RULES OF THE ETHICS COMM'N PROPOSED AMENDMENTS AND/OR DRAFTS FOR THE 2012 LEGIS. SESSION, 8–10 (Dec. 16, 2011), *available at* <http://www.ok.gov/oec/documents/AMENDDEC.11.pdf> [hereinafter PROPOSED AMENDMENTS]. These amendments, however, were not presented to the Oklahoma State Legislature.

21. *See* OKLA. ETHICS COMM'N, LEGISLATIVE CHANGES: ETHICS COMM'N RECOMMENDATIONS FOR 2011 SESSION (Feb. 7, 2011), *available at* <http://journalrecord.com/23rd-and-Lincoln/2011/06/22/speaker-seeks-update-of-oklahoma-campaign-finance-laws-in-light-of-citizens-united-decision> [hereinafter LEGISLATIVE CHANGES]. This source includes the proposed amendments to OKLA. STAT. tit. 21, §§ 187–187.2 (2012).

This article examines the corruptive corporate influence that can inevitably result from the effects of the Supreme Court's decision in *Citizens United* on Oklahoma's campaign finance laws without also amending the disclosure requirements.²² Part I discusses the history of Congress's attempts to regulate the role of corporations in campaign finance.²³ Part I also discusses some of the major Supreme Court decisions involving challenges to federal campaign finance laws enacted to address the role of corporations in elections, as well as the laws in Oklahoma that mirrored these decisions up until *Citizens United*.²⁴ Part II examines the Supreme Court's decisions in detail and recounts the path to, and the aftermath of, *Citizens United*.²⁵ Part III discusses current Oklahoma law and its regulations on corporate campaign practices.²⁶ Part IV discusses and analyzes the proposed amendments and their possible effects on campaign finance in Oklahoma state elections and the recent changes in the federal election system as a result of *Citizens United*.²⁷ Part IV also examines the realistic value of the possible effects in Oklahoma as compared to the present state of the federal system, as well as the need for the enactment of strengthened disclosure requirements to combat the effects resulting from the growing power of corporations in campaign finance.²⁸ Part V provides concluding remarks for this article.²⁹

I. BACKGROUND

A. A History of Corruption

Attempts to limit the role of corporations in elections began in early American history.³⁰ Some believe that the fear of corporate influence escalated during the Civil War as corporations contributed money to elections in exchange for government contracts.³¹ However, Congress's first major attempt to address corporate campaign contributions did not occur until 1907 with the Tillman Act.³² For the first time, corporations and national banks were prohibited from contributing money to any political campaign.³³ President Roosevelt strongly advocated for the Tillman Act, and its provisions were aimed at

22. See LEGISLATIVE CHANGES, *supra* note 21; see also PROPOSED AMENDMENTS, *supra* note 20, at 8–10; see generally OKLA. STAT. tit. 21, §§ 187–187.2 (2012).

23. See *infra* notes 30–41.

24. See *infra* notes 42–83.

25. See *infra* notes 84–174.

26. See *infra* notes 175–90.

27. See discussion *infra* Part IV.A–C.

28. See discussion *infra* Part IV.D.

29. See discussion *infra* Part V.

30. See *United States v. Int'l Union United Auto.* 352 U.S. 567, 570–84 (1957) (discussing in detail the history of Congress's attempts to limit the role of corporations in elections before holding that the appellee labor union violated the Corrupt Practices Act).

31. Newcomer, *supra* note 2, at 246. According to Newcomer, President Lincoln feared corporations would contribute to candidates in elections to gain political influence. *Id.*

32. Tillman Act of 1907, Pub. L. No. 59-36, 34 Stat. 864, 865 (codified as amended at 2 U.S.C. § 441(b) (2006)), invalidated by *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010); *Int'l Union United Auto.*, 352 U.S. at 575.

33. See sources cited *supra* note 32.

maintaining the role of the individual in the democratic process.³⁴

In 1909, some members of Congress feared the ability of corporations to find other ways to influence elections.³⁵ These congressmen wanted to address this potential problem by expanding the Tillman Act to state legislative actions by prohibiting donations of any kind from corporations or national banks in both state and federal elections.³⁶ These attempts, however, were unsuccessful.³⁷

Congress finally pushed through another major reform in 1925 with the Corrupt Practices Act ("CPA").³⁸ The CPA expanded limitations on corporations by broadly prohibiting both monetary and non-monetary contributions.³⁹ This legislation, aimed at addressing the fear of political corruption resulting from large corporate contributions, was a significant move toward congressional regulation of campaign funding.⁴⁰ Although Congress passed additional regulations on corporations, the most significant reform did not occur until over sixty years after President Roosevelt pushed Congress to pass the Tillman Act.⁴¹

B. Supreme Court Decisions

Following the enactment of various regulations in the 1970s, the Supreme Court addressed many issues in campaign finance reform.⁴² In these cases, recurring issues involved the role corporations play in funding political campaigns and the appropriate level of regulation.⁴³ The Court laid the foundation for its treatment of campaign finance issues when it addressed Congress's largest move toward reform in *Buckley v. Valeo*.⁴⁴ The case involved constitutional challenges to the formation of the Federal Election Commission ("FEC") and the enactment of the Federal Election Campaign Act ("FECA").⁴⁵ Certain provisions in FECA limited both monetary contributions — made directly to candidates or their campaign committees — and expenditures, which include independent spending that supports or opposes "a clearly identified candidate."⁴⁶ The decision upheld campaign contribution limitations, but declared limitations on campaign expenditures unconstitutional.⁴⁷ The distinction between contributions and expenditures was important because it effectively made expenditures the primary funding method for

34. *Int'l Union United Auto.*, 352 U.S. at 575.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 576.

39. *Id.* at 577.

40. *See id.*

41. *See id.* at 577–78; *see also* *Buckley v. Valeo*, 424 U.S. 1, 6–7 (1976) (discussing constitutional challenges to the new regulations under FECA and the formation of the FEC).

42. *See generally* J. Robert Abraham, Note, *Saving Buckley: Creating a Stable Campaign Finance Framework*, 110 COLUM. L. REV. 1078 (2010) (conducting an extensive study of Supreme Court cases addressing campaign finance reform). For purposes of this article, only *Buckley v. Valeo*, 424 U.S. 1 (1976), *McConnell v. FEC*, 540 U.S. 93 (2003), and *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010) will be discussed.

43. *See* Abraham, *supra* note 42, at 1078.

44. *Buckley*, 424 U.S. at 6.

45. *Id.* at 6–7; *see* Abraham, *supra* note 42, at 1078.

46. *Buckley*, 424 U.S. at 12–13 (citation omitted).

47. *Id.* at 38, 47–48.

candidates' campaign supporters.⁴⁸

In 2002, Congress enacted the Bipartisan Campaign Reform Act ("BCRA") in reaction to a disturbing investigation of contributors circumventing disclosure requirements and gaining access to political candidates through large expenditures in the 1996 presidential elections.⁴⁹ BCRA's purpose was to prevent corporations and other outside groups from escaping disclosure requirements of large expenditures and electioneering communications by claiming the money was spent on issue advocacy.⁵⁰ The Court dealt with challenges to this legislation the following year in *McConnell v. FEC*.⁵¹ In *McConnell*, the Court upheld the prohibition on corporate independent expenditures except through political action committees ("PAC" or "PACs"), or separate segregated funds.⁵² The new BCRA disclosure requirements for expenditures constituting electioneering communications — those "made within thirty days of a primary" or "sixty days of a general" election and that "refer[] to a clearly identified candidate" — were also upheld.⁵³ The Court felt this decision was consistent with prior holdings that found a need to regulate the influence of wealthy contributors in elections.⁵⁴

The *Citizens United* decision marked a strong departure from the Court's past emphasis on corporate regulations in campaign finance.⁵⁵ The majority found that the First Amendment guarantee of freedom of speech protected corporations and their ability to make expenditures expressly advocating for a candidate.⁵⁶ In other words, the *Citizens United* majority held that corporations could make unlimited expenditures through their general treasury funds, which effectively overruled laws that existed since shortly after the *Buckley* decision in 1976.⁵⁷

C. Oklahoma Law

The current Oklahoma laws addressing the role of corporations in campaign finance mirror the federal laws enacted shortly after the Supreme Court's decision in *Buckley*.⁵⁸ The laws also conform to the limitations on corporate expenditures upheld in *McConnell*.⁵⁹ Under Oklahoma law, an expenditure is defined as "a purchase, payment,

48. See Abraham, *supra* note 42, at 1078–79.

49. *McConnell v. FEC*, 540 U.S. 93, 131–32 (2003).

50. *Id.* The Court defined "issue advocacy," as opposed to "express advocacy," as political advertisements for or against an identified candidate that did not use the "magic words" such as "elect" or "vote." Because FECA only required disclosure of expenditures that were made in express advocacy, i.e., by using the magic words, funds raised for the purpose of issue advocacy were not subject to disclosure requirements. *Id.* at 125–26.

51. *Id.* at 132–33.

52. *Id.* at 204–06, 209.

53. 2 U.S.C. § 434(f)(3)(A) (2002); *McConnell*, 540 U.S. at 208–09.

54. See *McConnell*, 540 U.S. at 205.

55. See generally Richard Briffault, *Corporations, Corruption, and Complexity: Campaign Finance After Citizens United*, 20 CORNELL J.L. & PUB. POL'Y 643 (2011) (discussing the public outcry after and implications of the Court's decision).

56. *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876, 908 (2010).

57. See 2 U.S.C. § 441b (2006); *Citizens United*, 130 S. Ct. at 901–02.

58. OKLA. STAT. tit. 21, §§ 187–187.2 (2012). See 2 U.S.C. § 441b for the federal law.

59. OKLA. STAT. tit. 21, § 187.2(b)(2) (2012); see *McConnell*, 540 U.S. at 204–05 (upholding the corporate expenditure limits in 2 U.S.C. § 441b).

distribution, loan, advance, compensation, reimbursement, fee deposit, transfer of funds between committees, or a gift made by a committee.”⁶⁰ It does not include corporate communications “except a communication by the corporation’s political action committee promoting or opposing a candidate or candidates.”⁶¹ This provision limits the ability of a corporation to make expenditures for campaign funding purposes unless it forms a PAC for that purpose.⁶² Corporations are also prohibited from making campaign contributions, and the statute provides penalties for willful violations of these provisions.⁶³

In response to the Supreme Court’s ruling in *Citizens United*, then Oklahoma Speaker of the House, Kris Steele, initiated a study in June 2011 of the state’s campaign finance laws.⁶⁴ Although the FEC had not yet amended its regulations to conform to *Citizens United*, lawsuits were already filed in some states that challenged laws not in compliance with the Court’s ruling.⁶⁵ Steele claimed he wanted to study current Oklahoma law “while ensuring the integrity of [Oklahoma’s] electoral process and the freedom of individuals and entities of Oklahoma.”⁶⁶

Even before the Speaker’s statement of his planned investigation, Oklahoma’s laws prohibiting corporate expenditures did not comply with federal law under *Citizens United*.⁶⁷ As a result of the January 2010 decision, politicians discussed their concerns that the state’s campaign finance laws were unenforceable.⁶⁸ In these communications, then Attorney General, Drew Edmonson, stated that he planned to inform state prosecutors that the Oklahoma laws were no longer enforceable.⁶⁹

The Oklahoma Ethics Commission (“OEC”) drafted amendments to the current laws that would bring Oklahoma in compliance with federal law during the spring 2011 legislative session.⁷⁰ Once passed, these amendments will allow corporations to make unlimited expenditures through their general treasury funds under Oklahoma law, but corporations will still be prohibited from making contributions.⁷¹ These amendments will also allow corporations to directly fund electioneering communications such as advertisements, short films, or other forms of advocacy in media.⁷² A corporation wanting to make such expenditures could sue the state on the grounds that its current corporate

60. OKLA. STAT. tit. 21, § 187(8).

61. OKLA. STAT. tit. 21, § 187(8)(b).

62. *Id.*

63. OKLA. STAT. tit. 21, § 187.2(A), (E)–(F).

64. Marie Price, *Speaker Seeks Update of Oklahoma Campaign Finance Laws in Light of Citizens United Decision*, THE JOURNAL REC. LEGIS. REP. (June 22, 2011), <http://journalrecord.com/23rd-and-Lincoln/2011/06/22/speaker-seeks-update-of-oklahoma-campaign-finance-laws-in-light-of-citizens-united-decision>.

65. *Id.*

66. *Id.*

67. Clifton Adcock, ‘Out of Compliance’: Could Some of Oklahoma’s Laws Regulating Corporate Donations be at Odds with Federal Case Law?, OKLA. GAZETTE (June 8, 2011), <http://www.okgazette.com/oklahoma/article-11911-%E2%80%99out-of-compliance%E2%80%99.html>.

68. *Id.* These discussions took place in February 2010, and involved then Attorney General, Drew Edmonson, former Senate President Pro Tempore, Glen Coffee, and former House Speaker, Chris Bengtson. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. See Price, *supra* note 64.

expenditure prohibitions do not comply with federal law if these amendments are not passed.⁷³

Additional studies were conducted after the amendments were not passed during the 2011 legislative session.⁷⁴ On September 20, 2011, state legislators listened to the findings of the committee studying the issue, as well as input from OEC officials.⁷⁵ Although some legislators expressed reluctance to allow corporations unlimited freedom in independent expenditures, OEC officials urged that the change was necessary under federal law.⁷⁶ The officials further emphasized the need for this change because of the tendency for law firms to sue states that do not comply with federal law.⁷⁷

In December 2011, the OEC drafted additional disclosure requirements with the amendments allowing corporate independent expenditures.⁷⁸ The amended disclosure requirements track the identity of supporters who contribute a certain amount in both campaign contributions and expenditures.⁷⁹ The purpose of the disclosure requirements is to decrease the potential corporate influence by requiring corporations and other groups to disclose the amount they spend in Oklahoma elections.⁸⁰ While these strengthened disclosure requirements have not been presented to the Oklahoma State Legislature, the OEC hopes the legislature will pass the amendments to campaign expenditures in conjunction with the disclosure requirements to both comply with federal law and combat the effects of the new law through public disclosure.⁸¹

A number of states have already enacted legislation that conforms to *Citizens United*, but adding Oklahoma to the list could be detrimental to the state's election system if adequate disclosure requirements are not also enacted.⁸² If the proposed amendments to Oklahoma's limitations on corporate expenditures are enacted without additional disclosure requirements, corporations would be permitted to make independent expenditures

73. *Id.*

74. See Adcock, *supra* note 67.

75. Price, *supra* note 16. The House Speaker at the time, Kris Steele, asked the House Rules Committee to conduct a study of Oklahoma's current campaign finance law. The officials from the Oklahoma Ethics Commission who spoke at this presentation included the agency's then general counsel, Rebecca Adams, and then acting director, Marilyn Hughes. *Id.*

76. *Id.*

77. *Id.*

78. Marie Price, *Commission to Grapple with Proposed Ethics Law Changes Driven by Court Decisions Expanding Political Speech Protection to Corporations*, THE JOURNAL REC. LEGIS. REP. (Dec. 15, 2011), <http://jrlr.net/23rd-and-Lincoln/2011/12/15/commission-to-grapple-with-ethics-law-changes-driven-by-court-decisions-expanding-political-speech-protection-to-corporations/>.

79. PROPOSED AMENDMENTS, *supra* note 20, at 8–10; see Price, *supra* note 78.

80. See PROPOSED AMENDMENTS, *supra* note 20, at 8–10; see also Price, *supra* note 78.

81. See Price, *supra* note 78. In May of 2012, the OEC passed amendments that only require disclosure when the donation is made "for the purpose of" making a contribution, independent expenditure, or electioneering communication. OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-14(a)(13) (2012); see also OKLA. STAT. tit. 74, ch. 62, App. § 257:1-1-2 (2012) (defining "for the purpose of"). In essence, these provisions would allow a corporation to escape disclosure by claiming the donation was not given "for the purpose of" making a campaign contribution or independent expenditure. Thus, as this article argues, stronger disclosure requirements are necessary to identify the source and amount of independent expenditures in every situation.

82. See *Life After Citizens United: State Laws Affected by Citizens United*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=19607> (last updated Jan. 4, 2011) [hereinafter *Life After Citizens United*] (listing the number of states with laws that conflict with *Citizens United*, the number of states that have changed their laws, and the states that have yet to do so).

through their general treasury funds without disclosure of the sources, thereby corrupting Oklahoma elections by minimizing the voices of constituents while promoting corporate ideology.⁸³

II. THE ROAD TO *CITIZENS UNITED*

A. *Buckley v. Valeo*

The 1976 Supreme Court ruling in *Buckley v. Valeo* marked the beginning of a long line of cases addressing campaign finance reform.⁸⁴ The case dealt with constitutional challenges to FECA and the creation of the FEC.⁸⁵ The multiple parties who brought challenges included, but were not limited to, candidates for federal office and political parties.⁸⁶ The plaintiffs argued that the new legislation was unconstitutional because the regulation of campaign funding infringed freedom of speech under the First Amendment.⁸⁷ Because money is the primary form of expression in the election process, the plaintiffs argued, the regulation of monetary expression by limiting campaign contributions and expenditures in elections violates freedom of speech.⁸⁸ In defense of these regulations, the government argued that contributions and expenditures are within its power to regulate because such limitations regulate *conduct* and not speech.⁸⁹

In its discussion of the new limitations on contributions and expenditures, the Court examined the “governmental interest in preventing corruption and the appearance of corruption.”⁹⁰ Limitations on campaign contributions were upheld, but expenditure limitations were deemed unconstitutional.⁹¹ The Court held expenditure limitations failed to serve the government’s interest in minimizing the potential for corruption in the federal election process.⁹² In reaching this conclusion, the Court drew a distinction between the interests served by contribution limitations versus those served by expenditure limitations.⁹³ On one hand, expenditure limitations independent of candidates did not serve any interest “sufficient to justify the restriction on the quantity of political expression” while limitations of contributions made directly to candidates served “[t]he interest in alleviating the corrupting influence of large contributions.”⁹⁴

83. See LEGISLATIVE CHANGES, *supra* note 21, for the amendments to corporate expenditures. See PROPOSED AMENDMENTS, *supra* note 20, for the disclosure amendments.

84. See Abraham, *supra* note 42, at 1078.

85. *Buckley v. Valeo*, 424 U.S. 1, 6–7 (1976). Although the appointment of the FEC was an important issue in the Court’s decision, it is not a focus of this article.

86. *Id.* at 7–9.

87. *Id.* at 11.

88. *Id.*

89. *Id.* at 15.

90. *Id.* at 45.

91. *Id.* at 38, 47–48.

92. *Id.* at 47–48.

93. *Id.* at 55.

94. *Id.*

While the Court ruled on other various provisions of FECA, an important part of the decision involved the possible corruption caused by large campaign contributions.⁹⁵ The Court introduced this idea when it stated “[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined.”⁹⁶ The main difference between contributions and expenditures that the Court identified was that contributions involve money given directly to a candidate’s campaign, and the amount of money given must be publicly disclosed.⁹⁷ If this amount of money is unlimited, the Court reasoned, then the public may assume (correctly, in some cases) that there is an inherently corrupt relationship between a candidate and his largest contributor.⁹⁸

The Court observed that expenditures, on the other hand, are not directly contributed to a candidate’s campaign, but, rather, they involve spending “relative to a clearly identified candidate.”⁹⁹ Therefore, limiting campaign spending, if independent of the candidate, was unnecessary to prevent corruption.¹⁰⁰ The Court also held that only expenditures that expressly advocated for or against a candidate required disclosure to the public to prevent an unconstitutionally over-inclusive regulation on political speech through expenditures.¹⁰¹ Thus, the “reality or appearance of corruption” from quid pro quo relationships between candidates and wealthy contributors was sufficient for the Court to uphold the limitations on contributions, but the Court did not find that expenditures posed the same threat of corruption.¹⁰²

The definition of quid pro quo corruption in *Buckley* received some criticism for failing to address a large potential for corruption in groups that seek to buy political influence through large contributions.¹⁰³ This narrow definition ignored the potential for corruption through corporations and other groups who were willing to fund candidates in other ways besides directly contributing to the candidate’s campaign to encourage corporate political interests.¹⁰⁴ However, the Court’s analysis of contributions verses expenditures and the possibility for political corruption in *Buckley* served as an important distinction in later campaign finance cases.¹⁰⁵

95. *Id.* at 27; Abraham, *supra* note 42, at 1085–86.

96. *Buckley*, 424 U.S. at 26–27. The Court’s idea of “quid pro quo” corruption stems from the possibility of elected officials using their position for the benefit of their most wealthy contributors.

97. *See id.* at 27–29.

98. *Id.*

99. *Id.* at 41–42.

100. *Id.* at 43–44.

101. *Id.* at 45.

102. *Id.* at 28, 45.

103. *See* Kurt Hohenstein, “*Clio, Meet Buckley — Buckley, Clio*”: *Re-Introducing History to Unravel the Tangle of Campaign Finance Reform*, 1 ALB. GOV’T L. REV. 63, 69–70 (2008).

104. *Id.* at 70.

105. *See id.* at 71–72.

B. *McConnell v. FEC*

The potential for corruption in federal elections became a reality the Court faced in *McConnell v. FEC*.¹⁰⁶ *McConnell* involved constitutional challenges to BCRA, which Congress enacted in 2002 in response to findings of a senate committee that investigated campaign practices in the 1996 elections.¹⁰⁷ The committee found that many corporations made large expenditures and electioneering communications to gain access to political candidates.¹⁰⁸ Corporations spent large amounts of money in elections not to support the candidates' ideals, but because they wanted to influence congressional decision-making.¹⁰⁹ In doing so, many corporations circumvented the 1971 FECA disclosure requirements by making large expenditures in support of, or in opposition to, federal candidates through the use of issue advocacy and "soft money."¹¹⁰

Corporations and other groups avoided disclosure requirements through a permissible method under the construction of FECA that the Court upheld in *Buckley*.¹¹¹ These groups organized as 527 committees or 501(c) corporations to make expenditures in support of or in opposition to a particular candidate.¹¹² Then, the entity made expenditures that identified the candidate, usually concerning an issue, but the expenditures did not use the "magic words" — vote for, elect, oppose — by expressly calling for the election or defeat of the candidate.¹¹³ Under the Court's holding in *Buckley*, FECA did not require disclosure of expenditures that did not both clearly identify the candidate and use the magic words, and such expenditures were considered issue advocacy.¹¹⁴ Therefore, corporations could support candidates in federal campaigns through their general treasury funds in an unregulated method.¹¹⁵

Corporate executives used large issue advertising expenditures to buy in-person time with federal candidates, similar to the infamous "White House coffees," wherein corporate executives could discuss their legislative interests with the President.¹¹⁶ The senate committee report proved that numerous candidates from both parties held similar meetings in which wealthy supporters sought political influence by gaining access to pol-

106. See *McConnell v. FEC*, 540 U.S. 93, 122 (2003).

107. *Id.* at 129–30, 134. The Senate Committee on Governmental Affairs issued these findings in a 1998 report. The report consisted of six volumes and described the practices of certain campaign contributors who attempted to gain exclusive access to federal candidates. *Id.* at 129–31.

108. *Id.* at 130–31.

109. *Id.* at 124–25.

110. The Court defined "soft money" as monetary donations to political parties made by corporations and labor unions that were not subject to disclosure requirements under FECA. *Id.* at 122–23. These donations were not subject to disclosure because corporations and labor unions claimed they were made for the purpose of influencing state and local elections, and were therefore non-federal donations that were outside the regulation of FECA. *Id.*

111. *Id.* at 126; see *Buckley v. Valeo*, 424 U.S. 1, 45 (1976).

112. *McConnell*, 540 U.S. at 126–28; see 26 U.S.C. § 501(c)(1)–(c)(6) (2012); see also 26 U.S.C. § 527 (2012). Corporations and other outside groups prefer to contribute to these tax exempt organizations because they are not required to list their individual donors.

113. *McConnell*, 540 U.S. at 126–28.

114. *Id.*; see *Buckley*, 424 U.S. at 45.

115. *McConnell*, 540 U.S. at 127–28.

116. *Id.* at 130 (citing S. REP. NO. 105-167, vol. 4, at 41–42, 195–200). These "White House coffees" involved President Clinton meeting with corporate executives who contributed millions to the President's campaign. *Id.* at 130 n.28.

iticians.¹¹⁷

In response to the ability of corporations to avoid FEC regulation, Title II of BCRA prohibited “corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections.”¹¹⁸ Title II, Section 203 of BCRA expanded the regulation of corporations by prohibiting them from using their general treasury funds in issue advocacy through electioneering communications.¹¹⁹ To prevent circumvention through issue advocacy, BCRA’s disclosure requirements extended those under FECA by requiring disclosure of funds used in electioneering communications, which included advertisements that identified a federal candidate without use of the magic words and were aired within thirty days of a primary election or sixty days of a general election.¹²⁰

The *McConnell* plaintiffs asserted several constitutional challenges to various sections of BCRA.¹²¹ The plaintiffs claimed that the regulations violated freedom of speech under the First Amendment, the Elections Clause, equal protection under the Due Process Clause, and that the regulations were void for over-breadth.¹²² The Court carefully compared these challenges to the interests served by BCRA.¹²³

The opinion recognized Congress’ authority to regulate corporations in federal elections since the 1976 *Buckley* decision.¹²⁴ The Court also noted that the prohibition on funding through corporations’ general treasury funds — while not an issue in the case — was constitutional and did not create a complete ban on corporate funding because corporate expenditures, though subject to regulation, were still permissible.¹²⁵ For instance, a corporation could make these expenditures by creating a separate segregated fund, or PAC.¹²⁶

The Court based its holding on prior rulings of legislation enacted to combat “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.”¹²⁷ The Court struck down the constitutional challenges to Title II.¹²⁸ The congressional findings of corporate practices, such as the financing of numerous campaign ads that aired shortly before federal elections through unregulated and undisclosed funding, further influenced the Court’s decision.¹²⁹ Therefore, the Court upheld BCRA’s expanded regulation of corporations and disclosure requirements.¹³⁰

117. *Id.* at 130–31.

118. *Id.* at 132.

119. *Id.* at 204.

120. 2 U.S.C. § 434(f)(3)(A) (2012); *McConnell*, 540 U.S. at 204.

121. *McConnell*, 540 U.S. at 134.

122. *Id.* at 134, 158–59.

123. *See id.* at 134–35.

124. *Id.* at 203.

125. *Id.*

126. *Id.* at 204.

127. *Id.* at 205 (citing *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 660 (1990)).

128. *Id.* at 207.

129. *See id.*

130. *Id.* at 209.

The *McConnell* decision was important for many reasons, but primarily because it recognized the need to amend FECA due to the rise in the number of groups capable of circumventing the disclosure requirements by omitting the magic words in large campaign expenditures.¹³¹ The cases following *Buckley* influenced the Court's emphasis in *McConnell* on preventing corruption by regulating corporate spending and requiring disclosure of such spending.¹³² In sharp contrast to *Citizens United*, *McConnell* also marked the Court's willingness to show deference to Congress to enact legislation aimed at regulating the use of soft money and issue advocacy, thereby minimizing the corruptive role of corporations in federal elections.¹³³

C. *Citizens United v. FEC*

In *Citizens United*, the Court overruled its prior decisions involving corporate campaign expenditures.¹³⁴ *Citizens United* was a non-profit corporation that brought an action to run advertisements for its film, *Hillary: The Movie*, criticizing Hillary Clinton.¹³⁵ The organization feared it could not run these advertisements due to the electioneering communication prohibition upheld in *McConnell*.¹³⁶ In addition, *Citizens United* wanted to air the film shortly before the primary election.¹³⁷ The non-profit argued it could do so because the limitations on corporate expenditures in electioneering communications were unconstitutional and should not apply to the film.¹³⁸ Not only did the Court find the film fell within the statute, but it also addressed *Citizens United*'s constitutional challenge that the statute violated freedom of speech, which was a claim that the organization dismissed from its original complaint.¹³⁹

The Court began its free speech analysis by criticizing the extent of regulations on campaign finance imposed by the PAC requirement.¹⁴⁰ In the five-four decision, Justice Kennedy compared subjecting corporations to FEC prosecution if they do not abide by the PAC requirement to sixteenth and seventeenth century licensing laws in England.¹⁴¹ He further claimed that the First Amendment was meant to prevent such regulations.¹⁴² Kennedy went on to criticize the PAC options for corporations under section 441b by claiming they were "burdensome alternatives," "expensive to administer and subject to extensive regulations."¹⁴³ The Court ultimately found that the prohibition on corporate

131. See Joshua Downie, Note, *McConnell v. FEC: Supporting Congress and Congress's Attempt at Campaign Finance Reform*, 56 ADMIN. L. REV. 927, 928 (2004).

132. See *id.* at 936–37.

133. See *id.* at 936.

134. *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876, 886 (2010).

135. *Id.* at 886–87. *Citizens United* argued that 2 U.S.C. § 441b(2) (2006), the disclosure, and the disclaimer requirements of BCRA were unconstitutional, and the organization filed an injunction against enforcement of these provisions. *Id.* at 888.

136. 2 U.S.C. § 441b(2); *Citizens United*, 130 S. Ct. at 887–88.

137. *Citizens United*, 130 S. Ct. at 888.

138. *Id.* at 888.

139. *Id.* at 891–92.

140. *Id.* at 895–96.

141. *Id.*

142. *Id.* at 896.

143. *Id.* at 897.

independent expenditures violated the First Amendment notwithstanding the PAC option.¹⁴⁴

In addressing the issue of the disclosure requirements for electioneering communications, the Court first noted that the documentary criticizing Hillary Clinton was a form of express advocacy because it clearly called for her defeat.¹⁴⁵ Under the Court's holding in *McConnell*, a corporation could not fund a film such as *Hillary* on its own, but it could do so by creating a PAC or separate segregated fund.¹⁴⁶ Additionally, the donations to the PAC required disclosure if the electioneering communication either expressly called for the election or defeat of a candidate (express advocacy), or if it referenced a clearly identified candidate *and* was aired within a certain time period before an election or primary (electioneering communication).¹⁴⁷ The Court found that the disclosure requirements were valid, but overruled the long-standing prohibition on corporate independent expenditures.¹⁴⁸ The decision therefore permitted corporations to make independent expenditures through their general treasury funds without the "burdensome alternatives" of a PAC or separate segregated fund.¹⁴⁹ Further, corporate independent expenditures did not require disclosure as long as they qualified as issue advocacy and were not electioneering communications aired within the specified time frame before elections.¹⁵⁰

The Court claimed that its holding was based on *Buckley*, but as Justice Kennedy noted, the ban on corporate independent expenditures was not addressed in *Buckley*.¹⁵¹ The statute encompassing this ban took effect shortly after the *Buckley* decision.¹⁵² In his dissent, Justice Stevens observed that the prohibition on corporate expenditures was not an absolute ban because of the separate segregated fund or PAC option.¹⁵³ He claimed that the majority provided insufficient support for its assertion that these options were overly burdensome.¹⁵⁴ Further, he found the overruling of corporate regulations unnecessary because no party in *Citizens United* asked the Court to do so.¹⁵⁵

Justice Stevens also criticized the majority's holding and its willingness to ignore long-standing precedent.¹⁵⁶ He felt the overruling of the corporate expenditure prohibition would allow corporations to spend as much money from their general treasury funds as they wanted in promoting a certain candidate.¹⁵⁷ He found that the majority ignored the legislative findings in *McConnell*, Congress's attempt to prevent this outcome, and the ability of corporations to circumvent disclosure requirements.¹⁵⁸ Justice Stevens and

144. *Id.* at 913.

145. *Id.* at 890.

146. *Id.* at 897.

147. 2 U.S.C. § 434(f)(3)(A) (2012); *Citizens United*, 130 S. Ct. at 887.

148. *Citizens United*, 130 S. Ct. at 913–14.

149. *Id.* at 897, 913.

150. *See* 2 U.S.C. § 434(f)(3)(A); *Citizens United*, 130 S. Ct. at 913–14.

151. *Citizens United*, 130 S. Ct. at 902.

152. *Id.*

153. *Id.* at 942–43 (Stevens, J., dissenting).

154. *Id.*

155. *Id.* at 941.

156. *Id.* at 938–39.

157. *Id.* at 940.

158. *Id.* at 956–57.

the other dissenting Justices predicted that this unlimited spending would enhance the role of corporations and their interests in federal elections.¹⁵⁹

Stevens also noted that perhaps the most disturbing aspect of ignoring prior holdings was the narrow definition of quid pro quo corruption adopted by the majority.¹⁶⁰ He believed the legislative findings discussed in *McConnell* were sufficient evidence of the potential corruption of corporations' influence on political candidates through large expenditures.¹⁶¹ The dissent further criticized the narrow view of corruption through actual quid pro quo arrangements among corporations and political candidates embraced by the majority by predicting that corporations would use independent expenditures to promote their interests with elected officials.¹⁶²

Although Justice Thomas joined the majority's decision to strike down the prohibition on corporate expenditures, he dissented with respect to the majority's decision to uphold the disclosure requirements.¹⁶³ He stated that requiring disclosure of campaign funding infringed on the most fundamental principles of the First Amendment's protection of free speech.¹⁶⁴ In his view, requiring political supporters to publicly disclose the amount they spend leads to public criticism of a candidate's supporters as well as the candidate himself.¹⁶⁵ Justice Thomas predicted that fear of this criticism would lead to some campaign supporters choosing not to support a candidate, which he believed was the result of disclosure requirements chilling speech.¹⁶⁶

The aftermath of the Court's decision in *Citizens United* included a variety of reactions, but that of Senator Tom Udall from New Mexico was more than critical.¹⁶⁷ Senator Udall found the overruling of the corporate expenditure prohibition remarkable considering the legislative findings of BCRA that showed the potential for corruption in federal campaign funding.¹⁶⁸ He further claimed that the decision created permissible forms of corruption because its narrow view involved only actual corruption.¹⁶⁹ Senator Udall also noted that *Citizens United* displayed an unwillingness to show deference to Congress despite its efforts to extend regulation of campaign finance since the *Buckley* decision.¹⁷⁰ One of the possible unfortunate results of *Citizens United*, he felt, was that it would lead candidates to devote more time to campaign fundraising from private parties

159. See *id.* at 940.

160. *Id.* at 965.

161. *Id.*

162. *Id.* at 965–66.

163. *Id.* at 980 (Thomas, J., concurring in part and dissenting in part).

164. *Id.*

165. See *id.* at 982.

166. *Id.* at 982. Justice Thomas compared his opinion on disclosure requirements with the events concerning the passing of Proposition 8 in California. He noted that both supporters and opponents of the amendment to California's Constitution engaged in harassment and scare tactics through the public disclosure of money spent for or against the amendments. *Id.* at 980–81.

167. Tom Udall, *Amend the Constitution to Restore Public Trust in the Political System: A Practitioner's Perspective on Campaign Finance Reform*, 29 YALE L. & POL'Y REV. 235, 235–36 (2010). While Senator Udall proposes amending the Constitution as the solution to the problems caused by the Court's decision, this article does not focus on such a proposal.

168. *Id.* at 239.

169. See *id.* at 246.

170. See *id.*

and negatively affect the public's view of corruption in the democratic system.¹⁷¹

Those supporting the outcome believe *Citizens United* was predictable and unremarkable.¹⁷² While there were signs that the Court was moving toward deregulation of corporate involvement in campaigns, even those who do not agree that the decision's holdings had strong implications must admit that *Citizens United* was bold for its complete lifting of long-time regulations.¹⁷³ Further, this group cannot ignore the decision's impact on state laws and elections.¹⁷⁴

III. OKLAHOMA CAMPAIGN FINANCE LAW

As previously mentioned, Oklahoma's current campaign finance laws strongly resemble those upheld by the Supreme Court before *Citizens United*.¹⁷⁵ There are limits on contributions an individual or family may contribute and penalties for violating these limitations, but there are no limits on expenditures.¹⁷⁶ The laws' different treatment of contributions and expenditures incorporates the *Buckley* Court's distinction between the two.¹⁷⁷ The laws prohibit corporations from making independent expenditures and are identical to regulations upheld in *McConnell*.¹⁷⁸ Therefore, if a corporation wants to make an expenditure in support of a political candidate, it can only do so through the PAC option.¹⁷⁹ This option allows a corporation to solicit money that is retained in a fund separate from its general treasury fund, or PAC, established for the purpose of raising funds for the corporation's candidate of choice.¹⁸⁰ Under this regulation, the fund must be separate from the corporation's general treasury fund, the money must be donated for the fund's particular purpose of political campaign support, and donations to PACs are subject to contribution limits.¹⁸¹

The rationale behind these limitations in Oklahoma incorporates the rationale the Court relied on in upholding the federal limitations in *McConnell*.¹⁸² As the *McConnell* Court noted, there are compelling reasons for prohibiting corporate independent expendi-

171. *Id.* See Warren Rudman & Timothy E. Wirth, *Politicians in Congress Should Serve You, Not Rich Contributors*, CHRISTIAN SCI. MONITOR (May 24, 2010), <http://www.csmonitor.com/Commentary/Opinion/2010/0524/Politicians-in-Congress-should-serve-you-not-rich-contributors> for a discussion of the decision of two White House legislators to not run for re-election due in part to the current nature of campaign finance.

172. See generally Justin Levitt, *Confronting the Impact of Citizens United*, 29 YALE L. & POL'Y REV. 217 (2010).

173. See *id.* at 220. Levitt discusses the extension of corporate campaign funding rights addressed by the Court's prior holdings in *FEC v. Wis. Right To Life*, 551 U.S. 449 (2007) and *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765 (1978).

174. See *Life After Citizens United*, *supra* note 82; see also *Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490 (2012) (holding that Montana's prohibition on corporate independent expenditures unconstitutional under *Citizens United*).

175. See 2 U.S.C. § 441b(2) (2006); OKLA. STAT. tit. 21, §§ 187-187.2 (2012). See also *McConnell v. FEC*, 540 U.S. 93 (2003); *Buckley v. Valeo*, 424 U.S. 1 (1976).

176. OKLA. STAT. tit. 21 § 187.1(A)(1)-(2), (E), (F).

177. See *Buckley*, 424 U.S. at 55.

178. OKLA. STAT. tit. 21 § 187.2(B)(1)-(2); see *McConnell*, 540 U.S. at 204.

179. OKLA. STAT. tit. 21 § 187.2(B)(2).

180. *Id.*

181. OKLA. STAT. tit. 21 §§ 187(7)(b)(3), 187.2(B)(2).

182. See 2 U.S.C. § 441b(2) (2006); *McConnell*, 540 U.S. at 204-07.

tures, including protection of the shareholders' interests.¹⁸³ For example, requiring a separate segregated fund for corporate expenditures protects the interest of shareholders in the corporation's profits who do not wish to donate to support or oppose a particular candidate.¹⁸⁴

A more obvious reason for these limitations is the amount of money corporations could potentially spend in campaign funding if these practices were left unregulated.¹⁸⁵ The potential corruption made possible by a corporation's ability to buy political influence significantly decreases without its general treasury fund at its disposal for such purposes.¹⁸⁶ A corporation's total wealth, unlike that of an individual or small support group, allows a corporation to support candidates through various costly media sources (i.e., electioneering communications), such as television advertisements.¹⁸⁷ If campaign finance laws did not limit the funding of these ads, corporations could fund unlimited political advertisements that focus only on the candidates or issues that serve the corporations' best interests.¹⁸⁸ These unlimited advertisements could also mislead voters to believe that the focus of the advertisements reflects the most important issues in the current election.¹⁸⁹ Therefore, regulating corporate funding reduces corporations' control in expensive media outlets and diminishes the risk that candidates ignore the contemporary issues that concern individual constituents during elections.¹⁹⁰

IV. CAMPAIGN FINANCE WITH THE PROPOSED AMENDMENTS

A. The Potential for Corruption in Oklahoma

The need to regulate corporate funding and require disclosure in Oklahoma is necessary to prevent the threat of corruption resulting from quid pro quo relationships between political officeholders and corporate supporters.¹⁹¹ The risk of this occurring is serious at both the state and federal levels because candidates feel obligated to act in the best interest of those who comprise the primary source of their campaign message.¹⁹² Because corporations are often a primary source of support for campaign expenditures, they potentially play a major role in helping candidates win elections.¹⁹³ Once in office, corporations may influence an elected official as compensation for the corporate spending that initially helped elect the official.¹⁹⁴ This influence can take the form of legislation, political influence, and even access to other influential government officials.¹⁹⁵

183. *McConnell*, 540 U.S. at 204.

184. *Id.*

185. *See id.* at 207.

186. *See id.* at 204–05.

187. *See id.* at 207–08.

188. *See id.* at 207.

189. *See id.*

190. *See id.*

191. *See id.* at 115–17; LEGISLATIVE CHANGES, *supra* note 21, at 8.

192. *See McConnell*, 540 U.S. at 115–17.

193. *See id.* at 115–16.

194. *See id.* at 115.

195. *See id.*

Therefore, allowing unlimited corporate expenditures without public disclosure of their sources would inevitably promote the interest of the few (the corporations) over the many (all other constituents).¹⁹⁶

The proposed changes to Oklahoma's campaign finance laws pose a serious threat of transforming all of these potential concerns into a reality.¹⁹⁷ While corporations would still be unable to make campaign contributions under the proposed law, they could make their own unlimited independent expenditures.¹⁹⁸ Additionally, corporations can form a PAC with other corporations for the sole purpose of making expenditures and electioneering communications.¹⁹⁹ There is no limit on the source or amount of contributions to these types of PACs.²⁰⁰ The ability to make unlimited expenditures without the requirement of a separate fund increases both the amount of undisclosed money corporations can spend and the risk to the shareholders' interests in the corporations' profits.²⁰¹

To lessen the effects of unlimited corporate expenditures, strengthened disclosure requirements could give the public access to information concerning the amount and identity of campaign expenditures.²⁰² The amendments drafted in 2011 by the OEC would require all groups, including corporations, to disclose the amount spent and identity of those who finance both independent expenditures and electioneering communications.²⁰³ Corporations could still make unlimited expenditures, but the candidates or causes corporations supported and the amount the corporations spent would be public information.²⁰⁴ The voting public could therefore determine which candidates had the strongest corporate support through these additional disclosure requirements.²⁰⁵

On their face, the proposed expenditure changes may not seem as serious to those who cannot ascertain any immediate, threatening effects.²⁰⁶ There are also some who argue this outcome is unlikely because the non-corporate forum still contributes a fair amount toward candidate advocacy.²⁰⁷ However, it is not the present effects that pose the greatest threat to Oklahoma voters.²⁰⁸ It is the gradual future effects that could take the political voice from Oklahoma constituents and place it in the hands of corporate tyrants.²⁰⁹ It is also difficult to ignore the dollar amounts readily available to corporations and the realistic threat of corporate influence in political campaigns.²¹⁰ To demonstrate

196. *See id.*; *see generally* LEGISLATIVE CHANGES, *supra* note 21.

197. *See generally* LEGISLATIVE CHANGES, *supra* note 21. As discussed in the background portion of this article, these changes have not been adopted by the Oklahoma Legislature.

198. LEGISLATIVE CHANGES, *supra* note 21, at 5–6, 8, 12.

199. *Id.* at 12.

200. *Id.*

201. *See id.*

202. *See* PROPOSED AMENDMENTS, *supra* note 20, at 8–10.

203. *Id.*

204. *Id.*

205. *See id.*

206. *See generally* LEGISLATIVE CHANGES, *supra* note 21.

207. Levitt, *supra* note 172, at 224.

208. *Contra id.*

209. *Contra id.*

210. *See id.* Levitt boldly claims other groups will not be affected by the power of corporations in candidate advocacy. I say this statement is bold because Levitt makes this claim just after proposing a scenario in which Exxon Mobil decides to use all of its \$45 billion net income it has at its disposal to spend in campaign finance

the impact of these changes, imagine a theoretical, yet plausible, situation that could happen under the proposed amendments without the adoption of the proposed disclosure requirements.²¹¹

B. The Hypothetical Under the New Law

George Reynolds is a wealthy, well-known businessman and attorney. He spent the first twenty years of his career moving his way up the corporate ladder at an Oklahoma corporation called Weiser Energy Association (“WEA”). Throughout his career, Reynolds obtained a reputation for being cut-throat, and he always oriented his goals around what was best for business. After spending a few years in his position as director of communications, Reynolds decided he would run for a seat in the Oklahoma Senate. Reynolds has little interest in politics, but he is always interested in boosting his reputation for excellence, and he believes he will win the election with ease. More importantly, he knows his corporate supporters have plans for his campaign.

Running against Reynolds is incumbent Jake Peters. Peters is not well-known, but he managed to win his first race with the support of the majority of his constituents and a small number of local organizations of which he is a member. Peters comes from a humble background and worked his way through college and law school. He always wanted to work in public service because he truly believed in being a voice for the people. Peters enjoys being a state senator and spent his first term advocating several causes that were important to his constituents. While he recognizes the large corporate support for Reynolds, Peters decides to fight for his seat and believes his hard work will show at the polls.

During the race, Reynolds’s corporate supporters realize Peters only has a slight majority of the constituents’ support. To win over enough votes, WEA produces a documentary, entitled *George Reynolds: The Real Oklahoman*. The documentary depicts Reynolds’s life as a beloved rags-to-riches story. Throughout the film, Reynolds emphasizes his sympathy for the typical Oklahoman who lives modestly, provides for his family, and goes to church every Sunday. In addition to the documentary, WEA produces several campaign commercials that portray Reynolds in the same fashion.

Under the newly-enacted campaign finance laws, WEA easily funds the documentary and advertisements through unlimited independent expenditures.²¹² It simply draws directly from its general treasury (worth approximately \$90 million).²¹³ As long as WEA is only paying for electioneering communications or independent expenditures in support of Reynolds — as opposed to making contributions — the amount that WEA may spend is unlimited.²¹⁴ Also, if the documentary and advertisements do not expressly advocate for Reynolds or against Peters, but merely relate to Reynolds as a candidate and are aired outside the specified time frames, then WEA would not be required to disclose the

expenditures.

211. See generally LEGISLATIVE CHANGES, *supra* note 21. The following demonstration incorporates the proposed changes identified in this source in the event they are adopted without the proposed disclosure requirements.

212. See *id.* at 12.

213. See *id.*

214. See *id.*

amount spent in expenditures, which could potentially be far more than the amount represented in public disclosure records.²¹⁵

While WEA is spending millions on expenditures from its general treasury, the shareholders' interest is unprotected.²¹⁶ One vulnerable shareholder of WEA is John Roy. He is retired now but still has an interest in the company. Roy remembers when WEA first started, and he is well acquainted with many of its high officials. Reynolds is not, however, an official Roy remembers fondly. Years ago, Roy tried to get his brother, Lynn, a job at WEA. Lynn did not possess the typical characteristics of a WEA employee, but he was ready to work hard in whatever position he could obtain.

On the way to his interview, Lynn ran into Reynolds. Reynolds took one glance at Lynn and knew he was not meant to work at WEA. After Lynn's interview, Reynolds urged the hiring officials not to hire Lynn. Lynn did not get the job, and he had a feeling it was due in part to something Reynolds said. Roy learned of Reynolds' actions, and he always blamed Reynolds for Lynn's failure.

Roy strongly disliked Reynolds and, for obvious reasons, did not want to donate to his campaign. Under the new Oklahoma law, Roy's interest as a shareholder at WEA is unprotected because WEA is not required to establish a separate segregated fund apart from its general treasury fund to make campaign expenditures.²¹⁷ Therefore, while WEA draws directly from its general treasury to pay for expenditures, Roy's interest in the company is affected without his knowledge or consent.²¹⁸

Even with his loyal supporters' greatest efforts, Peters cannot compete with the corporate backing Reynolds has from WEA. The documentary and commercials convince a majority of the constituents that Reynolds is "just like them." Further, because WEA is careful not to expressly advocate for Reynolds' election or for Peters' defeat, the money actually spent by WEA to produce the documentary and commercials is not disclosed and remains unknown to the local constituents.²¹⁹ Without the knowledge of Reynolds's significant corporate backing, the constituents believe the rags-to-riches story depicted in the documentary and commercials. The money spent by WEA in independent expenditures successfully wins votes for Reynolds through the repetitive message that he has the same background and morals as the constituents and that he will surely do what is best for Oklahoma while in office.

Reynolds settles into office and begins his duties as an Oklahoma Senator. A bill is introduced before the Oklahoma Senate that proposes to increase regulation of landfills in the state.²²⁰ Reynolds knows that WEA is in the process of getting state approval to

215. *See id.*

216. *See generally id.*

217. *See id.*

218. *See generally id.*

219. *See id.*

220. *See Former Senate President Pro Tem Mike Morgan and Two Others Charged with Conspiracy, Extortion, and Bribery*, THE FED. BUREAU OF INVESTIGATION OKLA. CITY DIV. (Mar. 31, 2011), <http://www.fbi.gov/oklahomacity/press-releases/2011/ok033111.htm> [hereinafter THE FED. BUREAU]. Reynolds's actions in this section are loosely based on those discussed in this indictment summary. The main difference is that the former President Pro Tem in this case allegedly accepted money while in office in exchange for his role in voting for or against certain legislation.

build several landfills around the state. If passed, due to its extensive regulations, this legislation would increase WEA's estimated cost of the landfills by twenty-five percent. When the potential vote looks close, Reynolds advocates strongly against the bill because he feels indebted to WEA for its help in his campaign.²²¹ With his skills in persuasion (and manipulation) from being a successful businessman, Reynolds miraculously convinces just enough senators to vote against the bill.

Reynolds' next move is proposing his own bill before the Senate. This bill aims to decrease regulations of state lakes and rivers by the Oklahoma Department of Agriculture ("ODA"). Reynolds writes the bill after learning of the Oklahoma Water Resources Board's report to the ODA that some of the lakes surrounding various WEA facilities contained pollutants exceeding permissible levels. Although it is uncertain, the ODA believes further research could prove WEA is responsible for the pollution. If the regulations remain unchanged, it will cost WEA millions to adopt new technology that will lessen the pollutants emitted from these facilities. Reynolds's bill eliminates a number of the regulations, thereby saving WEA from spending any money on changes.²²² Once again, Reynolds maintains his loyalty to WEA by getting the bill passed in both Houses through his skills in persuasion.

One of the lakes affected by a WEA facility is located in Reynolds's district. The lake does not pose any present danger, but over time the effects of the pollutants grow. For now, Reynolds's constituents have no knowledge that their own senator put their health at risk by returning a favor to a wealthy corporation.

Reynolds spends the rest of his term advocating the most important causes to WEA and similar companies. However, much of this legislation is not highly publicized because Reynolds only publicly discusses the few pieces of legislation he helps pass that are actually of interest to his constituents. This legislation includes minor increases in the funding of state highway construction projects and a law that makes it illegal to text and drive. The publicity concerning his vote on these bills sustains his positive image in the minds of his constituents. On the other hand, he does not speak publicly about his legislative actions that benefitted WEA. Therefore, Reynolds maintains the support of his constituents while he simultaneously repays WEA for its help in his election.

C. Changes in Federal Elections

While the preceding hypothetical is fictional, the likelihood of such events will increase with the enactment of the proposed amendments to Oklahoma campaign finance laws without the simultaneous enactment of stronger disclosure provisions.²²³ The impact of similar laws at the federal level is already apparent due to increasing evidence of corporate funding in federal elections.²²⁴ Although Congress has not amended federal law to conform to the Supreme Court's decision in *Citizens United*, the FEC gave corpo-

221. See LEGISLATIVE CHANGES, *supra* note 21; THE FED. BUREAU, *supra* note 220.

222. See THE FED. BUREAU, *supra* note 220.

223. See LEGISLATIVE CHANGES, *supra* note 21; PROPOSED AMENDMENTS, *supra* note 20, at 8–10.

224. See R. SAM GARRETT, CONG. RESEARCH SERV., No. 257511174, THE STATE OF CAMPAIGN FINANCE POLICY: RECENT DEVELOPMENTS AND ISSUES FOR CONGRESS (2011).

rations the go-ahead to make unlimited independent expenditures after issuing two advisory opinions in the spring of 2010.²²⁵ As a result, an April 2011 report to Congress stated that corporations and labor unions began making independent expenditures during the summer of 2010.²²⁶ The report also disclosed that the abolishment of prohibitions on corporate expenditures suggests that corporations could have more influence in future campaign funding than the political parties themselves.²²⁷

Studies reflecting the increase in non-party funding provide additional support for this suggestion.²²⁸ A November 2010 study from the Campaign Finance Institute showed that funding of electioneering communications and independent expenditures by non-political parties rose from \$119 million to \$280 million, which is an increase of 135%.²²⁹ The report also noted that groups known as “super PACs,” which are formed by corporations or other organizations for the sole purpose of making independent expenditures, increased dramatically.²³⁰ The vast majority of these groups did not emerge until after the *Citizens United* decision.²³¹ The groups spent an estimated \$84.6 million in independent expenditures during 2010 alone.²³² One such group is the super PAC American Crossroads, whose 2010 independent expenditures totaled around \$21.5 million.²³³ The report suggests that, due to the lifting of prohibitions on corporations in *Citizens United*, groups such as Crossroads received donations from a wider variety of contributors, including corporations.²³⁴

Several reasons provided in the report attribute the growth in independent expenditures to factors outside the lifting of the ban on corporate expenditures.²³⁵ These reasons include the steady rise in campaign funding over the years and the fact that the 2010 elections involved the replacement of many incumbent seats.²³⁶ However, the reported spending during this election may not be entirely accurate because disclosure requirements do not cover money spent on issue advocacy, and the lack of disclosure may also extend to money that is spent on both express and issue advocacy.²³⁷

With the ability to make unlimited independent expenditures and escape disclosure requirements through the use of issue advocacy, the money spent by outside groups reached an unprecedented amount in the 2012 presidential election.²³⁸ Conservative

225. *Id.* at 5.

226. *Id.*

227. *Id.* at 8–9.

228. *Id.* at 9.

229. *Id.*

230. *Id.*; see *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (holding — shortly after *Citizens United* — that the First Amendment prohibited limitation of corporate campaign contributions to committees that only make independent expenditures).

231. GARRETT, *supra* note 224, at 9.

232. *Id.*

233. *Id.*

234. See *id.*

235. See *id.* at 10.

236. *Id.*

237. *Id.* at 12.

238. See Kevin Quealy & Derek Willis, *Independent Spending Totals*, N.Y. TIMES, <http://elections.nytimes.com/2012/campaign-finance/independent-expenditures/totals> (last visited Jan. 10, 2013) for the spending totals of super PACs during the 2012 election that are updated daily.

groups alone spent over \$700 million in independent expenditures in an effort to gain control of the White House.²³⁹ Because these conservative groups were unsuccessful in their attempted takeover even with the help of wealthy donors, some believe that *Citizens United* was not the landmark decision as originally predicted.²⁴⁰

Voters may wonder what effects — if any — the funding from super PACs will have in their future voting experience in federal elections due to their inability to implement major changes in the 2012 presidential election.²⁴¹ The answer depends on the ability of the voting population to remain informed of the true supporters behind every individual candidate's campaign.²⁴² Although corporate expenditures rose dramatically after the *Citizens United* decision, the PACs they donate to are still required to disclose their donors in many cases.²⁴³ There is also hope that disclosure requirements in the federal system will be strengthened to curtail the effects of *Citizens United*.²⁴⁴ Therefore, information regarding which federal candidates have the strongest corporate support remains available, and it is in the best interest of every voter to seek such information and not rely on the fanciful campaign ads and other tactics employed by corporate supporters.²⁴⁵

Publicly disclosed campaign information is beneficial to voters who vote strictly by party affiliation, as well as voters who prefer candidates with individualized goals.²⁴⁶ In the first case, disclosure of a candidate's financial supporters will allow voters to discern whether the candidate is truly aligned with a particular party's interests or whether the candidate is hiding behind the party's ideology to disguise his influence from his wealthiest corporate supporters.²⁴⁷ In the latter case, voters benefit from publicly disclosed campaign funds in a similar manner by determining whether the candidate's proposed ideas may be subject to the influence from corporations that support his campaign.²⁴⁸ Public disclosure is important in both cases because of the enhanced ability of outside groups to gain political influence through unlimited funding as a result of *Citi-*

239. Paul Blumenthal, *Super PACs, Outside Money Influenced, But Didn't Buy the 2012 Election*, HUFFINGTON POST (Nov. 7, 2012, 4:13 PM), http://www.huffingtonpost.com/2012/11/07/super-pacs-2012-election-outside-money_n_2087040.html.

240. *Id.*

241. *See id.*

242. *See* Eric Posner, *Citizens United is Still Worth Hating Even Though Fat-Cat Super PACs Lost at the Polls*, SLATE (Nov. 9, 2012, 11:55 AM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2012/11/campaign_finance_in_2012_presidential_election_super_pacs_lost_but_citizens.html (noting that even with the major losses of the Republican party, "[s]ome Democrats did lose, and super PAC money may have made a difference").

243. *See* GARRETT, *supra* note 224, at 12; *see also* 2012 *Independent Expenditures*, FED. ELECTION COMM'N, http://www.fec.gov/data/IndependentExpenditure.do?format=html&election_yr=2012 (last visited Jan. 10, 2013).

244. *See* GARRETT, *supra* note 224, at 12.

245. *See* Blumenthal, *supra* note 239 ("It would be a big mistake to judge whether we have a corrupt campaign finance system today by the outcome of any of these elections. This is just the beginning.") (quoting Fred Wertheimer, president of Democracy 21, a major campaign finance reform group); Posner, *supra* note 242 ("The real harm in *Citizens United* is its suggestion that when we spot problems in our electoral system, we are helpless to fix them.").

246. *See* GARRETT, *supra* note 224, at 12.

247. *See id.*; *see also* Blumenthal, *supra* note 239 (discussing Mitt Romney's shift to the more conservative side during the primary election).

248. *See id.* at 10, 12.

zens United.²⁴⁹

Disclosed or not, it is safe to assume that corporate independent expenditures will only increase in future federal elections.²⁵⁰ With the Supreme Court invalidating the prohibition on corporate expenditures and the national parties struggling with their own funds due to the slow-recovering economy, it is likely that federal candidates' dependence on corporations to fund their campaign messages will only increase.²⁵¹ The ease with which corporations form such co-dependent relationships with federal candidates through campaign support makes the potential for corruption a more realistic possibility than in any federal election since before Congress passed FECA.²⁵² The potential for corruption in these relationships begins with the corporation's power in a candidate's campaign through unregulated spending, and inevitably ends with the corporation's ability to exert secret influence over the elected official's actions in office.²⁵³ Unfortunately, states with laws identical to those in the federal system concerning corporate independent expenditures, as well as states that will enact identical laws in the future, face the possibility of similar corporate influence.²⁵⁴

D. What the Future Holds

As evidenced by the current studies of the effects of *Citizens United* on federal elections, the proposed amendments to Oklahoma law that allow unlimited corporate independent expenditures pose serious changes in campaign funding practices in the state's elections if additional disclosure requirements are not also enacted.²⁵⁵ Although the amendments did not pass in the spring 2011 legislative session, it is only a matter of time before Oklahoma joins the other states that have already adopted similar amendments.²⁵⁶ Oklahoma corporations are currently permitted to make unlimited expenditures in the state without fear of criminal prosecution due to the policy of the former Attorney General not to enforce the current laws shortly after *Citizens United*.²⁵⁷ Therefore, the main concern is how the rise in corporate influence will affect the state's elections, and what, if anything, can be done to counter-balance these effects.²⁵⁸

The permissible method for corporations to influence political candidates under the proposed expenditure amendments, and the effects thereof, work much like the story of Reynolds discussed above.²⁵⁹ To support a candidate, a corporation could make expendi-

249. *See id.*

250. *See* Quealy & Willis, *supra* note 238.

251. *See* Blumenthal, *supra* note 239.

252. *See* Buckley v. Valeo, 424 U.S. 1, 26–27 (1976) (discussing Congress's intent to decrease the potential of corruption by regulating campaign finance practices).

253. *See* McConnell v. FEC, 540 U.S. 93, 129–32 (2003) (discussing the desire of wealthy contributors to influence legislative decisions to their advantage).

254. *See* Life After Citizens United, *supra* note 82; *see also* Am. Tradition P'ship v. Bullock, 132 S. Ct. 2490 (2012).

255. *See* LEGISLATIVE CHANGES, *supra* note 21, at 12; *see also* PROPOSED AMENDMENTS, *supra* note 20, at 8–10.

256. *See* Price, *supra* note 16; *see also* Life After Citizens United, *supra* note 82.

257. Adcock, *supra* note 67.

258. *See* LEGISLATIVE CHANGES, *supra* note 21, at 12.

259. *See id.*; *see also* discussion *supra* Part IV.B.

tures in a variety of media, including advertisements, flyers, or brochures.²⁶⁰ The funds for these expenditures could be drawn directly from the corporation's profits in its general treasury fund.²⁶¹ By allowing a corporation to draw directly from its profits without disclosing the corporation's role, as opposed to requiring the establishment of a separate segregated fund, a corporation can spend as much money behind the scenes as it desires.

The role of corruption enters this process in two ways. First, the potential amount in independent expenditures a corporation could spend in support of a candidate would be unlimited due to the fact that limits on expenditures are unconstitutional.²⁶² As in Reynolds' case, an elected official may feel indebted to a corporation that spent a large amount in expenditures during his campaign.²⁶³ Although the elected official may not engage in acts of outright corruption by accepting money in exchange for political favors, the official could participate in a less apparent form of corruption by allowing this feeling of indebtedness to affect his actions in office.²⁶⁴ For example, the official may make legislative decisions that would benefit the corporation, as opposed to the official's constituents, which could last throughout the official's elected term.²⁶⁵ Under the state's current disclosure requirements, the money corporations spend in support of a particular candidate may not even be disclosed if the corporation claims the donation was not made for a political purpose.²⁶⁶ This method of avoiding disclosure may prevent the public from recognizing the corporate motivation many legislative decisions — be they minuscule or of great significance — until long after the elected official is out of office.²⁶⁷ Thus, the question of who to hold accountable for legislative decisions resulting from the rise of corporate influence would only be answerable through amended disclosure requirements, which would require future politicians to handle any public dissatisfaction.²⁶⁸

The second method in which the role of corruption enters is through the potential for quid pro quo relationships to occur in the absence of the disclosure requirements.²⁶⁹ The potential for the elected official to act in furtherance of corporate interests would be unknown to the public due to the ability of corporations to make unlimited expenditures under the new law without additional disclosure requirements.²⁷⁰ This method involves the distinction between express and issue advocacy.²⁷¹ For instance, a corporation could make an expenditure such as a brochure that states "Vote for Reynolds" on the front and

260. See LEGISLATIVE CHANGES, *supra* note 21, at 8 (amending OKLA. STAT. tit. 21 § 187(7)(b)(8) (2012)).

261. See *id.* at 12 (amending OKLA. STAT. tit. 21 § 187.2 (2012)).

262. See OKLA. STAT. tit. 21, § 187(8) (2012); see also Buckley v. Valeo, 424 U.S. 1, 49 (1976).

263. See discussion *supra* Part IV.B.

264. See *id.*

265. See *id.*

266. See OKLA. STAT. tit. 74, ch. 62, App. §§ 257:10-1-14(a)(13), 257:1-1-2 (2012).

267. See PROPOSED AMENDMENTS, *supra* note 20, at 8–10.

268. See *id.*

269. See OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-13 (2012) for the current disclosure requirements of contributions and expenditures.

270. See generally LEGISLATIVE CHANGES, *supra* note 21.

271. See 2 U.S.C. § 431(9)(B)(iii) (2012) (codifying the distinction between issue and express advocacy and their respective disclosure requirements in the federal election system); OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-13 (2012) (applying the same distinction in Oklahoma).

is mailed to all the constituents in the district Reynolds is running in.²⁷² This would be a form of express advocacy because it calls for the election of a particular candidate.²⁷³ In making this expenditure, the corporation would be required to disclose the amount it spent under the state's campaign disclosure requirements.²⁷⁴ If the same brochure did not expressly call for the election or defeat of Reynolds, but instead listed some of his past achievements and highlighted his ideas for improving Oklahoma politics, then the brochure would be considered issue advocacy.²⁷⁵ Because in this case the brochure only relates to an identified candidate and does not call for his election or defeat (thereby making the brochure issue advocacy), the corporation would not be required to disclose the amount it spent on producing and distributing the brochures if it issued the brochure outside the specified time frame.²⁷⁶ Therefore, under the proposed amendments, the corporation could spend an unlimited amount of money on expenditures in the form of issue advocacy outside the time frame specified for disclosure of electioneering communications, and, without the enactment of additional disclosure requirements, the corporation's influence would be kept from the public's knowledge.²⁷⁷

With the inevitable enactment of the proposed amendments in the future, the only way to lessen the potential for corruptive corporate influence is through the simultaneous amendment of the state's disclosure requirements.²⁷⁸ Although the disclosure requirements upheld in *Citizens United* make the money spent on electioneering communications public knowledge, there are no present disclosure requirements in the federal system to account for corporate independent expenditures outside the specified time frame.²⁷⁹ The enactment of strengthened disclosure requirements, however, would prevent Oklahoma corporations from supporting candidates through issue advocacy expenditures to avoid disclosure and protect the candidates' reputation from being tied to corporate interests.²⁸⁰ Because such disclosure requirements would identify the source and amount spent in these types of expenditures, the threat of corporate influence would decrease through the constituents' knowledge of who is really supporting each candidate (and vice versa).²⁸¹ The disclosure of corporate expenditures would at least make the amount corporations spend in support of a candidate available to the public.²⁸² At that

272. See discussion *supra* Part VI.B.

273. See 2 U.S.C. § 431(9)(B)(iii) (2012); OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-13 (2012). If the brochure were still in support of Reynolds, but stated "Do not vote for Peters" on the front, it would also qualify as express advocacy because it clearly calls for the defeat of a particular candidate.

274. OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-13 (2012); see LEGISLATIVE CHANGES, *supra* note 21.

275. OKLA. STAT. tit. 74, ch. 62, App. § 257:10-1-13 (2012) (requiring only disclosure of expenditures that call for the election or defeat of an identified candidate).

276. See *id.*; see also LEGISLATIVE CHANGES, *supra* note 21, at 8.

277. See LEGISLATIVE CHANGES, *supra* note 21, at 12; see also PROPOSED AMENDMENTS, *supra* note 20, at 8–10.

278. See sources cited, *supra* note 277.

279. See 2 U.S.C. § 434 (2012) for the current disclosure requirements for federal elections. See GARRETT, *supra* note 224, at 10–12 (discussing the lack of disclosure of corporate independent expenditures in the aftermath of *Citizens United*).

280. See PROPOSED AMENDMENTS, *supra* note 20, at 8–10; see also *supra* note 81 (discussing the inadequacy of the most recent disclosure amendments).

281. See *id.*

282. See *id.*

point, it would then be the voting public's responsibility to use the available information when making voting decisions and to know the real interests each candidate promotes.

In the event the state's disclosure requirements are amended along with the new laws for corporate independent expenditures, a corporation could decide to sue the State of Oklahoma on the same grounds that Justice Thomas would have invalidated the disclosure requirements upheld in *Citizens United*.²⁸³ This argument would involve the corporation's claim that these laws substantially infringe on its First Amendment right to freedom of speech by chilling speech because requiring disclosure might persuade some groups to not support any candidate or cause.²⁸⁴ In response, a court should hold that disclosure requirements serve a compelling governmental interest by allowing Oklahoma voters access to information regarding each candidate's supporters, and thus, allow voters to make informed decisions in the best interest of the state.²⁸⁵ This response to an attack on disclosure is likely to prevail both because the Supreme Court continues to uphold the constitutionality of disclosure requirements — even in cases subsequent to *Citizens United*²⁸⁶ — and because allowing the public to have access to this information is the only way to prevent instances like that of Reynolds from becoming the routine practice of corporate-supported candidates in Oklahoma elections.

V. CONCLUSION: WHERE *CITIZENS UNITED* WILL LEAD OKLAHOMA

After a long history of reform, *Citizens United* unraveled the efforts of previous generations to decrease the role of corporations in our election system.²⁸⁷ One can only imagine the disappointment of President Roosevelt, after advocating the Tillman Act, to see the Supreme Court hold that corporate independent expenditures are protected by the First Amendment.²⁸⁸ The unprecedented power of corporations authorized by this holding threatens the public's knowledge of how unlimited corporate support leads to corruptive relationships in which politicians further corporate interests.²⁸⁹ With the federal system's implementation of corporate independent expenditures and many states following suit, the need for disclosure of corporate spending becomes more and more necessary to increase the public's awareness of corporate influence in politics.²⁹⁰ Without the disclo-

283. See *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876, 980 (2010) (Thomas, J., concurring in part and dissenting in part).

284. See *id.* at 980–82 (“Disclaimer and disclosure requirements enable private citizens and elected officials to implement political strategies specifically calculated to curtail campaign-related activity and prevent the lawful, peaceful exercise of First Amendment rights.”).

285. See PROPOSED AMENDMENTS, *supra* note 20, at 8–10; see also *supra* notes 246–54 (discussing the importance of disclosure).

286. See *Doe v. Reed*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring) (“Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.”).

287. See *supra* notes 134–74 (discussing the Court's decision in *Citizens United* and the implications of this ruling).

288. See *supra* notes 32–34 (discussing President Roosevelt's advocacy for the Tillman Act); see also *supra* notes 140–44 (discussing the Court's protection of corporate speech under the First Amendment in *Citizens United*).

289. See *supra* notes 235–40 (discussing the ability of corporations to spend large expenditures without disclosure to the public in the federal election system).

290. See *supra* notes 246–54 (discussing the effects of the *Citizens United* holding and the need for disclosure); see also *supra* notes 278–85 (discussing the need for strengthened disclosure requirements to be enacted).

sure of corporate spending, the ability of corporations to make unlimited expenditures from their general treasury funds as a result of *Citizens United* could corrupt state and federal elections by minimizing the voices of constituents while promoting corporate ideology.

The proposed amendments to Oklahoma's campaign finance laws raise the same potential influence of corporations already taking place in the federal system. The potential for the new law to allow politicians such as Reynolds to run in state elections in furtherance of corporate interests without the public's knowledge makes the simultaneous enactment of strengthened disclosure requirements all the more necessary. To prevent the overwhelming influence of wealthy outside groups such as corporations, it will be up to Oklahoma voters to make use of the disclosure of every candidate's campaign practices and to remain informed of each candidate's true ideology. In the aftermath of *Citizens United*, informed voter participation is the only method to prevent the potential for corporate influence in state and federal elections.

—Rachael F. Hughes*

with the amendments to corporate expenditures).

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